

SERVICE DATE – OCTOBER 24, 2018

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36213

SANTA CRUZ COUNTY REGIONAL TRANSPORTATION COMMISSION—PETITION
FOR DECLARATORY ORDER

Digest:¹ The decision finds that Santa Cruz County Regional Transportation Commission (Santa Cruz) would not become a common carrier if it enters into the proposed agreement with a new operator to provide freight rail service over a line where Santa Cruz owns the physical assets.

Decided: October 22, 2018

On August 9, 2018, Santa Cruz County Regional Transportation Commission (Santa Cruz), a noncarrier, filed a petition for declaratory order asking the Board to determine that it would not become a common carrier by rail upon entering into a revised Administration, Coordination, and License Agreement (the Revised ACL Agreement) with a new operator, Saint Paul & Pacific Railroad Company, LLC (SPR), relating to the Santa Cruz Branch line (the Line). The Board will grant the petition, as discussed below.

BACKGROUND

The Line, which was formerly owned by Union Pacific Railroad Company (UP), is 30.957 miles long and runs between milepost 0.433 at Watsonville Junction and milepost 31.39 at Davenport in Santa Cruz County, Cal. In July 2012, Santa Cruz sought a declaratory order from the Board that it would not become a common carrier under a transaction in which it would acquire the physical assets of the Line from UP, but UP would retain a permanent freight rail easement (the Easement). In a related transaction, the Santa Cruz and Monterey Bay Railway Company (SCMB) sought and received authority to acquire the Easement to provide common carrier freight service over the Line from UP. See Santa Cruz & Monterey Bay Ry.—Acquis. & Operation Exemption—Union Pac. R.R., FD 35659 (STB served Aug. 17, 2012). As part of these transactions, Santa Cruz and SCBM entered into an Administration, Coordination and License Agreement to govern their relationship as owner and operator, respectively (the Original ACL Agreement). In September 2012, the Board determined that, under the precedent set forth in Maine, Department of Transportation—Acquisition & Operation Exemption—Maine Central

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. See Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

Railroad, 8 I.C.C.2d 835 (1991) (State of Maine), Santa Cruz would not become a common carrier by acquiring the physical assets of the Line and entering into the Original ACL Agreement. See Santa Cruz Cty. Reg'l Transp. Comm'n—Pet. for Declaratory Order, FD 35653, slip op. at 4 (STB served Sept. 7, 2012).²

According to Santa Cruz's current petition, SCMB has been operating the Line since that time, but recently became unable to fulfill its common carrier and contractual obligations under the Original ACL Agreement and even temporarily ceased operations for a time. Santa Cruz states that SCMB has agreed to transfer the Easement under quitclaim deed to SPR, a newly-formed Class III rail carrier. See St. Paul & Pac. R.R.—Change in Operators Exemption—Santa Cruz & Monterey Bay Ry., FD 36207, slip op. at 1 (STB served Aug. 1, 2018). To govern the proposed relationship between SPR as the operator and Santa Cruz as the owner of the physical assets of the Line, the parties negotiated the terms of the Revised ACL Agreement. Santa Cruz states that the Revised ACL Agreement is substantially the same as the Original ACL Agreement, with only minor changes, which include the potential provision of passenger service, modifications to repair and maintenance responsibilities, changes to rail car storage and repair parameters, changes to license fees, and alterations to the termination and default provisions. (Santa Cruz Cty. Pet., Ex. B.)

DISCUSSION AND CONCLUSIONS

The Board has discretionary authority under 5 U.S.C. § 554(e) and 49 U.S.C. § 1321 to issue a declaratory order to terminate a controversy or to remove uncertainty. See Bos. & Me. Corp. v. Town of Ayer, 330 F.3d 12, 14 n.2 (1st Cir. 2003); Intercity Transp. Co. v. United States, 737 F.2d 103 (D.C. Cir. 1984); Delegation of Auth.—Declaratory Order Proceedings, 5 I.C.C.2d 675, 675 (1989). As explained below, the Board will exercise its discretion and grant Santa Cruz's petition in this case.

The Board's State of Maine line of precedent holds that a noncarrier's acquisition of an ownership interest in track, right-of-way, and related physical assets does not constitute the sale of a railroad line within the meaning of 49 U.S.C. § 10901 provided the arrangement establishes that: (1) the selling freight rail carrier retains a permanent, exclusive freight rail operating easement, together with the common carrier obligation on the line; and (2) the terms of the sale would protect the carrier from undue interference with the provision of common carrier freight

² The Board's September 2012 decision followed two earlier decisions in which Santa Cruz sought a declaratory order before purchasing the physical assets of the Line and entering into an agreement with a different proposed operator. In an August 2011 decision, the Board concluded that Santa Cruz's petition failed to satisfy the standard set forth in State of Maine. See Santa Cruz Reg'l Transp. Comm'n—Pet. for Declaratory Order, FD 35491 (STB served Aug. 22, 2011). In a December 2011 decision, the Board reviewed modified transaction documents from Santa Cruz and found that it had made the necessary revisions to satisfy the State of Maine requirements. See Santa Cruz Reg'l Transp. Comm'n—Pet. for Declaratory Order, FD 35491 (STB served Dec. 15, 2011). However, Santa Cruz did not proceed with the purchase because the proposed operator withdrew from the transaction. (See Santa Cruz Letter 1, Mar. 2, 2012, Santa Cruz Reg'l Transp. Comm'n—Pet. for Declaratory Order, FD 35491.)

rail service. Mass. Dept. of Transp.—Acquis. Exemption—Certain Assets of CSX Transp., Inc., FD 35312, slip op. at 5 (STB served May 3, 2010), aff'd sub nom. Bhd. of R.R. Signalmen v. STB, 638 F.3d 807 (D.C. Cir. 2011). The seller may transfer its easement to a third-party operator if the third-party operator similarly retains the common carrier obligation along with sufficient contractual rights and protections to meet that obligation. Mass. Coastal R.R.—Acquis.—CSX Transp., Inc., FD 35314, slip op. at 3-5 (STB served Mar. 29, 2010). Accordingly, the Board must consider whether the Revised ACL Agreement provides SPR, as SCMB's successor, with sufficient interest in and control over the Line to carry out its common carrier obligation without undue interference from Santa Cruz.

Here, the Revised ACL Agreement, as proposed, is substantially the same as the Original ACL Agreement, under which Santa Cruz maintained its noncarrier status. See Santa Cruz Reg'l Transp. Comm'n—Pet. for Declaratory Order, FD 35653, slip op. at 4. Importantly, the Revised ACL Agreement contains the same “No Material Interference with Freight Service” provision (Non-Interference Provision), which states: “Notwithstanding the rights retained by [Santa Cruz] under this Agreement, the exercise of such rights by [Santa Cruz] may not materially interfere with [SPR's] Freight Service rights and obligations under federal law, or rights under the Freight Easement, unless first approved by the STB.” (Pet., Ex. A, para. 2.3.) In addition, none of the adjustments in the Revised ACL Agreement would allow Santa Cruz to interfere unduly with SPR's common carrier freight rail service. For example, the modified language concerning the potential provision of passenger service contains an express condition that such service “will not materially conflict with, and will be subject and subordinate to Freight Service” (Pet., Ex. A, para. 2.4.) Similarly, the new termination and default provisions are conditioned upon the Board's prior approval before the freight rail service obligation could be transferred or abandoned. (Pet. Ex. A, paras. 8.2.2., 8.3.) Further, the changes to the provisions relating to rail car storage and license fees are not significant and would not interfere with or terminate SPR's freight operations.

Because the Board finds that entering into the Revised ACL Agreement, as proposed, would not allow Santa Cruz to interfere unduly with freight rail operations or result in it acquiring any rights or obligations to provide freight rail service, the Board declares that Santa Cruz would not become a common carrier.

It is ordered:

1. Santa Cruz's petition for a declaratory order is granted as discussed above.
2. This decision is effective on its service date.

By the Board, Board Members Begeman and Miller.